



## CGRFA-EX6 HIGHLIGHTS:

### THURSDAY, 28 JUNE 2001

The Committee of the Whole (COW) met in the morning and afternoon for a second round of negotiations on institutional provisions, and concluded its work. Plenary was cancelled pending the outcome of negotiations on the outstanding issues at the "Friends of the Chair" contact group that met throughout the day and into the evening. The working group on the list of crops, and a newly established informal working group on Article 15 (*Ex situ* collections) met in the afternoon.

#### COMMITTEE OF THE WHOLE

The COW completed a second reading of revised Articles 19-32 in Appendix I, Annex II and Appendix IV (CGRFA/Ex-6/01/2) circulated in the morning, with a view to resolving outstanding issues. Regarding Article 21, on dispute settlement, delegates agreed on text derived from CBD Article 27 as proposed by the EUROPEAN REGION. Regarding Article 25, on FAO Member Organizations, delegates agreed to retain this reference pending decision on the IU's legal basis. Article 26, on entry into force, was deleted following new text under Article 24, on signature, ratification, accession and entry into force. Article 29, on withdrawals, was agreed without comments.

Many issues remain unresolved. Article 23, on amendments of Annexes, remained bracketed for consideration by the Plenary, depending on the outcome of discussions on the list of crops. Article 27, on reservations, remained bracketed, as no consensus has been reached on whether reservations would be allowed. Regarding Article 28, on non-Parties, delegates noted a G77/China proposal in Appendix IV (CGRFA/Ex-6/01/2) and left the issue pending, to be addressed by the "Friends of the Chair" contact group. Regarding Article 30, on termination, delegates bracketed a US proposal stating that in the event of termination, the disposal of assets shall be governed by the financial rules to be adopted by the Governing Body (GB). Articles 31 (Depositary) and 32 (Authentic texts) were left pending the decisions of the "Friends of the Chair" contact group.

**ARTICLE 19 (GOVERNING BODY):** The only new development was agreement that the procedure to adopt the Rules of Procedure (19.7) "shall not be inconsistent with the Undertaking." Most of the pending articles relate to the GB functions, in particular functions that suggest decision making will be through consensus. The previously agreed provision on the GB's decision-

making procedures (19.5) was bracketed, at US insistence that the issue is linked to ongoing negotiations in the "Friends of the Chair" contact group.

**ARTICLE 20 (SECRETARY):** Delegates agreed on Articles 20.2, on the Secretary's functions, 20.3, on communication to Parties of GB decisions and information received, and 20.6, on cooperation with other organizations and bodies, in particular with the Convention on Biological Diversity (CBD). Provisions on appointment of the Secretary by either the FAO Director-General or the GB (Article 20.1) and providing documentation in either the FAO or the UN languages, which include Russian (Article 20.5), remained bracketed for consideration by the Plenary.

**ARTICLE 22 (AMENDMENTS OF THE IU):** Delegates agreed on Articles 22.1, on amendments proposed by Parties, 22.2, on adoption and communication of amendments, and 22.4, on amendments coming into force. Article 22.3, on voting procedures for amendments, remained bracketed for consideration by the Plenary. The two alternatives include: agreement by consensus and by two-thirds majority as a last resort; and agreement by consensus only. On Article 22.5, regarding rules for deposition of instruments by Member Organizations, reference to the FAO remained bracketed pending decision on the IU's legal basis.

**ARTICLE 24 (ACCEPTANCE):** The Legal Office provided alternative text on signature, ratification, accession and entry into force. He said that it reflects standard provisions of international agreements, and has been mainly derived from the CBD. Most delegates welcomed the new text. New Article 24 *ter*, on accession, states that the IU shall remain open for accession by FAO Members, and Members of the United Nations or its specialized agencies or of the International Atomic Energy Agency. CHINA suggested retaining the original Article 24.2 on admission of new parties by the GB. URUGUAY opposed, stressing that the IU should be open to all. Regarding Article 24 *quat*, which states that the IU shall enter into force on the 90th day after the deposit of the 30th instrument of ratification, acceptance, approval or accession, provided that at least 25 such instruments have been lodged by FAO Members, the Legal Office clarified that the need for determination of a number for required ratifications from FAO Members derives from Article XIV of the FAO Constitution. The EUROPEAN REGION, supported by the RUSSIAN FEDERATION and TANZANIA, suggested changing the number of required ratifications from FAO Members to 20, to accommodate concerns of non-FAO Members. The US proposed reference to FAO Members only.

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With AUSTRALIA, she also drew attention to original Article 24.3, on participation by non-FAO Members to the GB with proportionate share in the Secretariat's expenses, and suggested it be retained. The new text as amended by the EUROPEAN REGION, as well as the US proposal on new Article 24 *quat*, and the original Article 24.3, remain bracketed for consideration by the Plenary.

**ANNEX II (ARBITRATION):** Discussion centred around BRAZIL's inquiries regarding the implications of various FAO rules referring to FAO Article XIV constituted bodies, in particular on the mandate of the Committee on Constitutional and Legal Matters (CCLM) deriving from FAO Rule 34.3. The Legal Office explained that the CCLM plays an advisory role to the FAO Council, gave examples of how it had worked in practice with regard to some Article XIV constituted bodies, and, with Chair Montanaro Mifsud, explained that it is concerned with matters of legal and constitutional form, not substance.

**APPENDIX IV (COMPLIANCE):** Delegates exchanged views on Wednesday's proposal by the EUROPEAN REGION, as well as a G77/ China proposal included in Appendix IV (CGRFA/ Ex-6/01/2). The EUROPEAN REGION made a general introduction on its proposal, which is derived from Articles 33 and 34 of the Cartagena Protocol on Biosafety, stressing differences between a compliance procedure, national enforcement and dispute settlement. TANZANIA introduced the G77/ China proposal, and the EUROPEAN REGION stressed that it addresses mainly action at the national level, while their proposal refers to the international level. Summarizing the discussion, Chair Montanaro Mifsud noted that: there was general support for a compliance article along the lines of the European Region's proposal, excluding references to offering advice or assistance; some delegations would like measures, at Contracting Parties level, to ensure compliance; and some delegations would like a general clause on non-compliance, in accordance with international law, along the lines of the recently adopted non-binding FAO resolutions on Illegal Unregulated and Unreported Fishery (IUU).

Concluding the work of the COW, Chair Montanaro Mifsud noted that progress had been made, although not to the group's satisfaction, and that necessary decisions still had to be taken. He also noted that a revised text may be circulated Friday morning. He thanked delegates for their patience.

### INFORMAL WORKING GROUP ON LIST OF CROPS

The working group on the list of crops met in the afternoon to address outstanding issues on the common list of crops, following a morning meeting of the G-77/China that subsequently split into regional groups for more intensive discussion. Referencing the recommendations of the Report of the Panel of Experts on Crops for the IU, the output of a meeting coordinated by the FAO and International Plant Genetic Resources Institute, called for during the sixth Contact Group meeting in Spoleto, delegates agreed to include: the *Brassica* complex, including cabbage, rapeseed, mustard and salad crops; *Citrus*; and banana/plantain (*Musa*), except *Musa textilis*. Regarding beans (*Phaseolus*), one region objected to inclusion of *Phaseolus polianthus*. Regarding cassava (*Manihot*), one region maintained their position that only *Manihot esculenta* should be included. Regarding potatoes, one region maintained reservations on *Solanum phureja*, while several other regions advocated inclusion of all potato species. Regarding wheat, one region wished to restrict the list to the genus *Triticum*, while others advocated inclusion of all other relevant wheat genera iden-

tified by the Experts' Panel since discussions in Spoleto. Debate over inclusion of all crops from the complex taxonomic system of wheat and associated wild species remained unresolved. Another region expressed concern over lack of progress, encouraged regions to recognize the importance of this process for food security and the world's poor, and suggested adjournment to allow regions to finalize consultations.

Concluding the work of the group, Co-Chair John Dueck (Canada) commended the Report of the Panel of Experts, and said the lists are at the heart of the IU. He acknowledged the frustration expressed by some delegates, but stated that the original list of nine crops was now five times larger, which indicated progress. He encouraged further inter-regional cooperation, as the IU's success required the inclusion of all the major food crops. Co-Chair Javad Mozafari Hashjin (Iran) was positive about further progress and echoed Co-Chair Dueck's comment regarding the need for more regional consultations.

### IN THE CORRIDORS

Uncertainty reigned Thursday. Plenary was cancelled and closed-door discussions continued throughout the day in the "Friends of the Chair" contact group. Participants departed without a clear outline of Friday's agenda. Some participants' perception of lack of good faith in negotiations in the IU process prompted one delegate to liken the process to that of a cat thrown in cold water. One participant observed that several regions are holding out, some awaiting decisions on benefit-sharing provisions in Articles 13.2(d)(ii)-(iv) and others on legal issues. Progress appeared to hinge on whether the "Friends of the Chair" contact group could reach a package deal agreement.

There were indications, however, that the IU may yet be concluded during this session, even if the "Friends of the Chair" contact group fails to reach agreement, a prospect not totally unexpected given that this possibility was considered at the FAO Council that preceded the session. Some regional groups had indicated then that they were prepared to conclude the IU "with the greatest possible number of Parties..." Rumors were rife Thursday that preparations of the draft resolutions to adopt the IU were already underway. It is also rumored that the CGIAR System may be considering implementing the IU even before its entry into force.

Participants emerging from the "Friends of the Chair" late Thursday night were said to be optimistic that a successful conclusion of the IU appeared imminent by Friday's Plenary, scheduled for the afternoon. Agreement had reportedly been reached on Articles 11 (Coverage of the MS), 13 (MS of Access and Benefit-sharing) and 12 (Facilitated Access within the MS), with the exception of one provision. There is anticipation that Article 4 (Relations with other International Agreements) and legal issues could be subjected to "Friends of the Chair" informal consultations on Friday morning, while decision-making issues could be resolved in the Plenary. All now anticipate Friday's events... with two days left and counting...

### THINGS TO LOOK FOR TODAY

**PLENARY:** Plenary is expected to meet at 2:30 pm for a report on the progress of work. Informal consultations of the working group on Article 15 (*Ex situ* collections) and of the "Friends of the Chair" contact group are expected to continue during the morning.